

INTERNAL ARBITRATION PROCESS – Hobsons Bay City Council

In the matter of an Application by Councillor Daria Kellander concerning
Councillor Antoinette Briffa
(IAP 2023-7)

**HEARING PURSUANT TO DIVISION 5 OF PART 6 OF THE
LOCAL GOVERNMENT ACT (2020)**

Applicant: Councillor Daria Kellander

Respondent: Councillor Antoinette Briffa

Arbiter: Jo-Anne Mazzeo

DETERMINATION

Pursuant to s147(1) of the *Local Government Act 2020* (the Act) the Arbiter makes a finding of misconduct against Cr Antoinette Briffa.

STATEMENT OF REASONS FOR DECISION

The Application

1. The Application dated 29 May 2023 by the applicant sought a finding of misconduct against the respondent relating to two allegations concerning conduct on 19 March 2023 and 9 May 2023 which are summarised below.
2. The Application alleged that respondent had breached Standards 1 (Treatment of Others) and 4 (Councillor must not discredit or mislead Council or public) of the prescribed standards of conduct set out in Schedule 1 to the *Local Government (Governance and Integrity) Regulations 2020* (the Regulations) by:
 - (a) issuing a press release purportedly of behalf of the Council, or alternatively in her role as Mayor and Councillor of Hobson's Bay, and the contents of that statement:
 - (i) falsely targeted Mrs Deeming for being a signatory to a petition by labelling Mrs Deeming "anti trans", and
 - (ii) intentionally misgendered Mrs Deeming by referring to her with the pronouns "they/their" rather than "she/her, and
 - (b) issuing a tweet on 19 March 2023 in an official capacity as Mayor "targeting Mrs Deeming, labelling Mrs Deeming a leader of a "violent rally" and jointly as a "trans/queer hater, neo-nazi".
3. The Application contends that the actions as outlined above infer that Mrs Deeming "is a nazi and a bigot who advocates for discrimination against transgendered persons".
4. Furthermore, the Application contends that by misgendering Mrs Deeming, the respondent has "hurtfully and invalidly violated Mrs Deeming's civil and political rights by refusing to acknowledge her by her gender identity."
5. Both in the Application and at the Arbitration hearing, the applicant submitted that the above behaviour goes "beyond what is acceptable as robust debate in a democracy at local government level" and that the respondent should be held to the highest standard by way of the Arbiter making a finding of misconduct in respect of her behaviour towards Mrs Deeming.

Evidence provided

6. Written evidence was submitted by both the applicant and the respondent to assist the Arbiter to make a decision in relation to this matter.

7. Both parties supplemented their written evidence with oral evidence given at the Arbitration hearing conducted on 15 September 2023, and with the consent of the respondent, the applicant handed up a document which summarised the applicant's oral evidence given on the day.
8. Neither party called any witnesses in support of their case.
9. This Statement of Reasons does not summarise all of the information submitted to the Arbiter but refers to the information relied on by the Arbiter to make her decision and explain why.

The jurisdiction of the Arbiter in relation to this Application

10. Section 143 of the *Local Government Act 2020* (the Act) provides that an Arbiter may hear an Application that alleges misconduct by a Councillor.
11. Pursuant to section 147 of the Act an Arbiter may determine whether or not a Councillor has engaged in misconduct.
12. "Misconduct" is defined in section 3 of the Act and is defined as follows:

"... any breach by a Councillor of the prescribed standards of conduct included in the Councillor Code of Conduct."
13. The standards of conduct are set out in Schedule 1 to the Local Government (Governance and Integrity) Regulations 2020. The standards relevant to this matter provide as follows:

1. Treatment of others

A Councillor must, in performing the role of a Councillor, treat other Councillors, members of Council staff, the municipal community and members of the public with dignity, fairness, objectivity, courtesy and respect, including by ensuring that the Councillor –

- (a) takes positive action to eliminate discrimination, sexual harassment and victimisation in accordance with the **Equal Opportunity Act 2010**; and
- (b) supports the Council in fulfilling its obligation to achieve and promote gender equality; and
- (c) does not engage in abusive, obscene or threatening behaviour in their dealings with members of the public, Council staff and Councillors; and
- (d) in considering the diversity of interests and needs of the municipal community, treats all persons with respect and has due regard for their opinions, beliefs, rights and responsibilities.

4. Councillor must not discredit or mislead Council or public

- (1) In performing the role of a Councillor, a Councillor must ensure that their behaviour does not bring discredit upon the Council.
- (2) In performing the role of a Councillor, a Councillor must not deliberately mislead the Council or the public about any matters related to the performance of their public duties.

5. Standards do not limit robust political debate

Nothing in these standards is intended to limit, restrict or detract from robust public debate in a democracy.

Evidence of the Applicant

14. By way of background, the applicant informed the Arbiter of a current matter before Council where strong views are held by proponents of both sides of the debate regarding the issue of whether public toilets should be reserved for males and females as has traditionally been the case, or whether public toilets should be genderless.
15. On 9 May 2023 Council received a petition from community members in support of "an inclusive Policy that allows people of all genders to access toilet facilities, while preserving separate public toilets of men and women". The applicant submitted that one of the signatories to this petition was a community member, Mrs Moira Deeming, who is also a local Member of Parliament.
16. The applicant submitted that Mrs Deeming is "a local woman, a well-known feminist activist, and a local member of Parliament, she is entitled to be recognised in public statements by her preferred pronouns".
17. The applicant outlined that there is no factual dispute regarding the respondent as the author of both the tweet and the media release, but that the conduct of the respondent has fallen short of that expected of a councillor and required by the prescribed standards of conduct.
18. The applicant submitted that there had been a complaint made in writing by a resident regarding the conduct of the respondent and the applicant lodged an application for internal arbitration as a result.
19. Furthermore, the applicant submitted that Mrs Deeming made a formal complaint regarding the conduct of the respondent to Council on 6 June 2023.
20. The applicant does not accept the respondents' explanation for the conduct in question.

Evidence of the Respondent

21. The respondent confirmed the authenticity of both the media release and the tweet and agreed that there was no factual dispute regarding whether it was the respondent who authored both documents and the accuracy of them as provided to the Arbiter.
22. The respondent submitted that when read, both as it was intended to be read and on literal reading of the tweet, the tweet "does not accuse Mrs Deeming of anything other than being one of the leaders of the well-reported violent rally held outside Parliament on 18 March 2023."
23. Furthermore, the respondent submitted that numerous media articles and tweets also reported on Mrs Deeming's role in the rally (and submitted these as evidence to the Arbiter).
24. Regarding the allegation of misgendering Mrs Deeming, the respondent submitted that the use of the word "they" in the media statement did not mean to suggest Mrs Deeming identifies as non-binary and was simply typical use of the word "they" in the context of its practical application and sentence structure.
25. In relation to the Media Statement, the respondent highlighted the sentence the applicant was relying on as a breach of the standards as follows:

"I note suspended Liberal MP, Moira Deeming, also signed this petition. They are well known for their anti-trans women stance."
26. The respondent submitted to the Arbiter what she contended were written examples of "anti-trans" commentary by Mrs Deeming in her role as a Melton City Councillor and also other documents obtained pursuant to the *Freedom of Information Act 1982*.
27. The respondent submitted that no harm was meant towards Mrs Deeming by the way in which she was referenced. In support of this contention the respondent outlined her excellent standing in the local community, highlighting:
 - (a) four terms as a Councillor, with this being a second term as Mayor;
 - (b) appointment as a Justice of the Peace for 17 years and a Bail Justice for over 10 years;
 - (c) being well known for both national and international work in the space of human rights of LGBTIQ+ people; and
 - (d) membership on the Victorian Government LGBTIQ+ Workforce
28. The respondent acknowledged there was a difference of opinion regarding the toilets and is "happy to respectfully agree to disagree".

29. The respondent further submitted that it was this Application which highlighted to the respondent Mrs Deeming's dissatisfaction/offence with both the Media Release and the Tweet and that had she contacted the respondent directly, the respondent would have been very happy to discuss the matter with her. In support of this contention the respondent provided evidence confirming not only that this Application for Internal Arbitration was lodged on 29 May 2023, but that it wasn't until the applicant submitted their evidence for this hearing on 31 July 2023 that the respondent was even aware that the complaint had been made by Mrs Deeming.
30. The respondent also submitted to the Arbiter that she had reached out to the applicant on several occasions to try and establish a positive working relationship, but the applicant had not yet accepted such offers.

Findings of the Arbiter

31. The Arbiter makes a finding of misconduct against the respondent.

Reasons for the Arbiter's Decision

32. The tweet of the respondent dated 19 March 2023 reads as follows:
"@Moirra Deeming was one of the leaders of the violent rally outside Parliament yesterday. I support free speech, but trans/queer haters, neo-nazis & "Liberal" politicians jointly spreading hatred and fear is appalling. We are & deserve better than that."
33. In relation to the tweet in paragraph 32 above, the Arbiter accepted the submission of the applicant that the tweet fell below the standard of conduct expected of a Councillor. The tweet clearly demonstrates a failure to treat a particular member of the local community with dignity, fairness, objectivity and respect and the Arbiter was unable to conclude that the tweet could be read or interpreted as anything other than disrespectful towards Mrs Deeming.
34. The Media Release authored by the respondent dated 9 May 2023 includes the following sentence:
"I note suspended Liberal MP, Moira Deeming, also signed this petition. They are well known for their anti-trans women stance."
35. The Arbiter finds that the singling out of one particular individual by name in the way the Media Release does demonstrates a failure to provide the individual (in this instance, Moira Deeming) with the same level of respect afforded to the rest of the local community, and also demonstrates a failure to comply with Standard 1 (Treatment of others).
36. In relation to the allegation that the respondent intentionally misgendered Mrs Deeming, the Arbiter accepts the respondent was using inclusive language, and did not intend to be disrespectful in any way.

37. In relation to whether a sanction should be imposed for the misconduct outlined above, the Arbiter has decided not to issue a sanction to the respondent. This decision was made taking into account the respondents conduct and demeanour throughout the course of the Arbitration process and their commitment to ensuring inclusivity and equality both within their role on Council and in the broader community.
38. The Arbiter notes that whilst the application relates to conduct towards Mrs Deeming, there is a clear tension between the applicant and the respondent which, in the view of the Arbiter, appears to have contributed to the Application being made in relation to this matter.
39. At all times the respondent was measured and respectful towards both the Arbiter and the applicant. The Arbiter accepts the respondent's submission that had Mrs Deeming approached her directly regarding her comments, she would have discussed the matter with her in a respectful manner.

Jo-Anne Mazzeo
Arbiter

Date: 8 December 2023